

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM	DOCKET NO. SPU-04-8
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FINAL DECISION AND ORDER

(Issued September 17, 2004)

PROCEDURAL HISTORY

On March 24, 2004, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed with the Utilities Board (Board) a "Petition for Suspension or Modification of Number Portability," pursuant to 47 U.S.C. § 251(f)(2) and Iowa Code § 476.1 (2003), in coordination with its Network Improvement Plan (NIP) submitted in Docket No. RPU-02-4. Iowa Telecom requests that the Board suspend or modify the federal requirements relating to thousands-block number pooling (TBNP) and the long-term database method for local number portability (LNP) in some of its Iowa exchanges. The petition has been identified as Docket No. SPU-04-8.

Each local exchange carrier is required to provide number portability, pursuant to 47 U.S.C. § 251(b)(2). However, 47 U.S.C. § 251(f)(2) provides as follows:

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a

suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

(A) is necessary

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.”

In support of its petition, Iowa Telecom states that it is a rural incumbent local exchange carrier (ILEC) with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide. Iowa Telecom states that it has received requests from numerous wireless carriers seeking LNP in every exchange served by Iowa Telecom. Iowa Telecom anticipates it will provide LNP in most of its exchanges, serving over 85 percent of its customers, by the end of 2004. Iowa Telecom seeks a suspension or modification of the LNP requirement to allow it to

implement LNP in the remaining exchanges over the next three years. (Tr., pp. 24, 150).

On April 27, 2004, the Board issued an "Order Docketing for Further Proceedings, Establishing Procedural Schedule, Granting Stay, and Granting Interventions" in this docket. In that, order, the Board granted Iowa Telecom a temporary stay of the number portability requirement pending the completion of this proceeding. The Board also granted intervenor status to Sprint Corporation, on behalf of its wireless division, Sprint Spectrum, L.P., d/b/a Sprint PCS (Sprint), and WWC License, LLC, Verizon Wireless, and U.S. Cellular Corporation, jointly appearing as the Wireless Coalition for Intermodal Portability (Wireless Coalition). The Board also granted intervener status to NPCR, Inc., d/b/a Nextel (Nextel), by order issued May 10, 2004.

On May 13, 2004, the Wireless Coalition filed a "Motion to Reconsider the Temporary Stay or, Alternatively, to Clarify or Lift in Part the Temporary Stay" in this docket. Iowa Telecom filed a resistance to Wireless Coalition's motion on May 26, 2004. On June 21, 2004, the Board issued an order denying Wireless Coalition's motion, but clarifying the Board's April 27, 2004, order by stating that the provisions of the interim stay do not apply to those exchanges listed in Iowa Telecom's exhibit DRK-1, as submitted on May 19, 2004.

Pursuant to the procedural schedule established in this docket, Iowa Telecom filed direct testimony on May 19, 2004. Sprint and Wireless Coalition filed their direct testimony on June 16, 2004, and Iowa Telecom filed its rebuttal on June 30, 2004.

A hearing for the purpose of receiving testimony and cross-examination of all testimony was held on July 20, 2004. At the conclusion of the hearing, the Board requested that the parties file simultaneous briefs. Briefs were submitted by Iowa Telecom, Sprint, and Wireless Coalition pursuant to that request.

ISSUES

Section 251(b)(2) of the Telecommunications Act of 1996 (1996 Act) provides that each local exchange carrier has the duty to provide number portability to the extent it is technically feasible. The Federal Communications Commission (FCC) implemented and explained this requirement as it applies to intermodal (e.g., wireline-to-wireless) portability in an order issued November 10, 2003, in which the FCC requires that

LECs must port numbers to wireless carriers where the requesting wireless carrier's 'coverage area' overlaps the geographic location of the rate center in which the customer's wire line is provisioned, provided that the porting in carrier maintains the number's original rate center designation following the port.

See "Order," In re: Telephone Number Portability, CC Docket No. 95-116, ¶ 22

(2003). The deadline for complying with the FCC requirement depends upon the size of the market served. LECs serving the top 100 Metropolitan Statistical Areas

(MSAs) were required to offer intermodal number portability in those markets by November 23, 2003, while all other LECs were given an additional six months, to May 24, 2004, to comply. By order released January 16, 2004, the FCC extended the deadline for LECs serving less than 2 percent of the nation's subscriber lines to provide wireless local number portability in the top 100 MSAs to May 24, 2004, as well.

As previously noted, state commissions have the authority to suspend or modify these porting requirements, pursuant to 47 U.S.C. § 251(f)(2). Thus, the main issue before the Board is whether Iowa Telecom has shown it is entitled to suspension or modification of the number portability requirement pursuant to the statutory standards.

1. Whether suspension or modification of Federal LNP requirements is necessary to meet one of the conditions of Section 251(f)(2)(A).

Based on the language of 47 U.S.C. § 251(f)(2)(A), the Board must first determine whether a suspension or modification of the LNP requirements is necessary to avoid imposing a significant adverse economic impact on users of telecommunications services, or to avoid imposing an undue economic burden on Iowa Telecom, or to avoid imposing a requirement that is technically infeasible.

The record is clear that it is technically feasible for Iowa Telecom to implement LNP. Testimony received in this docket indicates that the software and hardware necessary for implementation is available. (Tr., p. 87). Therefore, the Board will focus its analysis on the economic factors presented in § 251(f)(2)(A).

The first of these factors is whether the suspension or modification "is necessary . . . to avoid a significant adverse economic impact on users of telecommunications services generally." 47 U.S.C. § 251(f)(2)(A)(i). This factor requires consideration of the economic impact on Iowa Telecom's customers and on other uses of telecommunications services.

The second factor is whether the suspension or modification "is necessary . . . to avoid imposing a requirement that is unduly economically burdensome." 47 U.S.C. § 251(f)(2)(A)(ii). This factor focuses on the cost to Iowa Telecom of requiring compliance with the requirement. It appears this factor may be most significant in the Board's analysis.

As a part of a settlement in Docket No. RPU-02-4, Iowa Telecom has agreed to file with the Board a Network Improvement Plan (NIP) which addresses the implementation of LNP, thousand-block number pooling (TBNP), and many other upgrades to Iowa Telecom's network. The NIP is to be filed on a periodic basis. The Board approved Iowa Telecom's initial NIP, addressing 204 network improvements, on May 11, 2004. That plan requires Iowa Telecom to have 80 percent of its exchanges LNP-capable and 70 percent of its exchanges TBNP-capable by January 20, 2005. (Tr., p. 31). According to the record in this docket, Iowa Telecom asserts that it will have 85 percent of its exchanges LNP-capable by January 2005. Specifically, 89 of Iowa Telecom's exchanges were LNP-capable by May 24, 2004; 107 additional exchanges were LNP-capable by August 14, 2004; and another 31

exchanges are expected to be LNP-capable by the end of 2004. (Iowa Telecom Exh. 18). In this docket, the Board will determine whether to allow a suspension or modification of the LNP requirements in Iowa Telecom's remaining 63 exchanges to allow implementation in those exchanges over the following three-year period.

Iowa Telecom is required to file a revised NIP on November 1, 2004, and again on an annual basis. Iowa Telecom indicates that in its next NIP it will propose a plan to deploy LNP in its remaining 63 exchanges in the years 2005 through 2007. (Iowa Telecom Exh. 18). Iowa Telecom proposes to make approximately 25 more exchanges LNP-capable by the end of 2005 and an additional 22 exchanges LNP-capable by the end of 2006. (Iowa Telecom Exh. 18). Iowa Telecom projects it will make its final 18 exchanges LNP-capable by the end of 2007. (Iowa Telecom Exh. 18). Iowa Telecom states that the conversion of these 63 exchanges for LNP will cost \$13 million and Iowa Telecom asserts that it does not have the human or capital resources to complete the work more quickly than the NIP will propose. (Tr., p. 158). Therefore, Iowa Telecom asks the Board to synchronize the FCC's LNP requirements with Iowa Telecom's upcoming NIP.

Both Sprint and Wireless Coalition maintain that Iowa Telecom has not met the burden of proof necessary to show that suspending Iowa Telecom's LNP deployment schedule would avoid an undue economic burden. Sprint states that Iowa Telecom's ability to impose a permissive surcharge on customers where LNP is available, as permitted by FCC regulation, will allow Iowa Telecom to recover its

costs for implementing LNP. Wireless Coalition maintains that only an exceptional demonstration of cost should qualify as an undue economic burden so as to justify a special exception or suspension from the LNP requirements. Wireless Coalition asserts that this is a demonstration that Iowa Telecom has not made.

The Board finds that the information presented by Iowa Telecom in this docket demonstrates that Iowa Telecom would face an undue economic burden if it were required to implement LNP in all 63 of its remaining exchanges by the end of 2004. The record supports Iowa Telecom's assertion that an acceleration of LNP deployment in Iowa Telecom's remaining exchanges could jeopardize funds that are currently budgeted to other necessary network improvements including, but not limited to, network stability upgrades, deployment of digital subscriber lines, network rehabilitation, network evolution, and new support services. Some of these upgrades must necessarily precede deployment of LNP if the available funds are to be used in an efficient and prudent manner; other upgrades are simply necessary to provide adequate service to Iowa Telecom's customers.

The Board also finds it relevant that exchanges serving 85 percent of Iowa Telecom's customers will be LNP-capable by December 31, 2004, and that Iowa Telecom's proposal specifies a date for implementation of LNP throughout its service area. These facts demonstrate that Iowa Telecom is giving appropriate consideration to LNP deployment by treating it as a high priority while also considering its resource constraints and the other demands on those limited resources.

In response to Sprint's and Wireless Coalition's assertion that the permissive surcharge to Iowa Telecom's customers would serve to recover Iowa Telecom's costs for exchanges converted to LNP, the Board notes that the record indicates the remaining 63 exchanges require significant modernization as well as LNP-specific upgrades. The surcharge will not cover the modernization costs for the 63 exchanges; it is only addressed to LNP implementation costs. Nevertheless, the Board will clarify its understanding that the surcharge collected for LNP deployment will be a spending commitment above and beyond Iowa Telecom's financial commitment toward network maintenance and improvements under the settlement in Docket No. RPU-02-4.

Because the Board has determined that Iowa Telecom has demonstrated that suspension or modification of the FCC's LNP requirements is necessary to avoid an undue economic burden, it is unnecessary for the Board to assess the criteria of whether users of telecommunications services, generally, would suffer a significant adverse impact.

2. Whether suspension or modification of Federal LNP requirements is in the public interest.

Pursuant to 47 U.S.C. § 251(f)(2)(B), the Board must determine whether a suspension or modification of the FCC's LNP requirements is consistent with the public interest, convenience, and necessity.

Iowa Telecom maintains that because there is currently so little demand for LNP in its remaining 63 exchanges, it is not in the public interest to mandate a

service that customers are not requesting at the expense of other services that customers are requesting. (Iowa Telecom Brief, p. 12; Tr., pp. 114-15). Iowa Telecom also states that it is not in the public interest to expend resources on switches and facilities that will be replaced within a three-year time period. (Iowa Telecom Brief, p. 12; Tr., p. 176). Iowa Telecom asserts that it is in the public interest, however, to establish reasonable priorities for capital and human resources and to establish an efficient and economical program for network improvements. (Iowa Telecom Brief, p. 12).

Sprint and Wireless Coalition assert that intermodal LNP also makes the switch wireline-to-wireline portable, which will increase competition and increasing competition is consistent with the public interest. Sprint and Wireless Coalition also assert that LNP would also serve the public interest by enabling Iowa Telecom to participate in number pooling in each of these exchanges.

The Board finds that suspension and modification of the FCC's LNP requirements for Iowa Telecom is consistent with the public interest. The Board finds that it is not in the public interest to mandate inefficient implementation of LNP while deferring retail services that customers are demanding or network improvements that must be completed.

As indicated above, the record is clear that if Iowa Telecom were required to implement LNP in its last 63 exchanges on a schedule that is faster than Iowa Telecom has proposed, then the company would have to delay other projects that

are equally important or more important. (Iowa Telecom Brief, p. 12). Moreover, a faster implementation schedule would require expending Iowa Telecom's limited resources to upgrade facilities that will be replaced in the near future. (Iowa Telecom filing, August 26, 2004). This would be an inefficient use of those resources, which would not be consistent with the public interest.

Another public interest factor the Board must consider is the availability of TBNP, a function that is related to LNP, but not identical to it. TBNP allows multiple local exchange carriers to share a single block of 10,000 telephone numbers when competing to serve the same exchange. In the absence of TBNP, each carrier must obtain its own block of 10,000 numbers. This can be very wasteful of telephone numbering resources, especially in smaller exchanges that have fewer than 10,000 total access lines. The Board finds it is generally in the public interest to require that TBNP be implemented along with LNP and on as rapid a schedule as is consistent with efficiency and financial constraints.

However, to the extent TBNP is a factor in Iowa Telecom's planning, the focus should be on those exchanges in which there is, or soon will be, a competitor with its own local service, or "last mile" network. For example, if a cable television system exists in an exchange and the operator of that system has announced plans to provide telephone service in that exchange using its system, then that exchange is likely to be a beneficial location to implement TBNP and LNP, before the cable

system operator offers telephone service. In this way, telephone numbering resources may be conserved and competition will be enhanced.

For much of the same reason, the Board will also require that Iowa Telecom consider implementing LNP first in those exchanges where the wireless carriers have expressed the greatest interest. By giving these exchanges a reasonable degree of priority in the NIP, Iowa Telecom can reduce the adverse effect on the public interest of delayed implementation of LNP and TBNP.

As both prongs of 47 U.S.C. § 251(f)(2) have been met, the Board will suspend and modify the FCC's LNP requirements and allow Iowa Telecom until December 31, 2007, to complete implementation of LNP in its remaining 63 exchanges in the stepped manner proposed by Iowa Telecom. The Board will require that Iowa Telecom's LNP implementation proposal be included in its NIP which is to be filed with the Board on or before November 1, 2004. The Board will also require that the NIP reflect that exchanges that have been the subject of multiple bona fide requests by wireless carriers for LNP, exchanges identified in Iowa Telecom's Exhibit 18, and those exchanges where there is foreseeable competitive entry by wireline carriers using their own last-mile networks, are to be given priority for LNP deployment. Any proposal by Iowa Telecom to delay implementation of LNP in any exchanges displaying these characteristics will have to be specifically and individually justified at the time the NIP is filed.

The Board will also grant Iowa Telecom's request and suspend TBNP requirements until May 2008, as proposed by Iowa Telecom. This suspension affects the 63 exchanges that will not be LNP-capable by the end of 2004 and 18 other exchanges that are already LNP-capable but are not currently TBNP-capable. (A list of the affected exchanges can be found in Iowa Telecom's Exh. 18.) However, the Board expresses concerns regarding Iowa Telecom's delay for implementing TBNP. According to Iowa Telecom's proposal, TBNP will be implemented in the remaining 63 exchanges at the same time that LNP is implemented. Iowa Telecom's focus will then shift to the last 18 exchanges, which may be TBNP-capable by May 2008. As described above, the Board will require that Iowa Telecom implement TBNP more quickly in exchanges where multiple BFRs have been received and in those exchanges where there is foreseeable competitive entry by wireline carriers using their own last-mile networks. Any decision by Iowa Telecom to delay implementation of TBNP in any exchanges displaying these characteristics will have to be separately justified.

Finally, the Board notes that 138 of Iowa Telecom's exchanges were not LNP-capable on May 24, 2004. Of these exchanges, 107 were made LNP-capable by August 14, 2004, and another 31 exchanges are expected to be LNP-capable by December 31, 2004. (Iowa Telecom Exh. 18). These two groups of exchanges were not the subject of much testimony or argument in this proceeding. Nevertheless, a suspension or modification of the FCC's LNP requirements is necessary for these

exchanges as the completion date for LNP implementation fell beyond the May 24, 2004, deadline established by the FCC. The Board will suspend and modify the FCC's LNP requirements for these exchanges until December 31, 2004.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The request for suspension and modification of the requirement to implement local number portability filed by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, on March 24, 2004, is granted pursuant to 47 U.S.C. § 251(f)(2), all as described in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 17th day of September, 2004.